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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1047

JAMES T. LYNN, SECRETARY OF HOUSING
AND URBAN DEVELOPMENT, Petitioner

v.

DOROTHY GAUTREAUX, ET. AL.

On Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

MOTION OF THE HOUSING AUTHORITY OF ELGIN ILLINOIS FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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Amicus Curiae

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MOTION

Pursuant to Rule 42 of the United States Supreme Court, the Housing Authority of Elgin, Illinois respectfully moves this court for leave to file a brief in this case as amicus curiae. The consent of the attorney for the petitioner herein has been obtained, but the attorney for the respondent herein refused to consent to the filing of a brief by the Housing Authority of Elgin, Illinois as amicus curiae.

The applicant, Housing Authority of Elgin, Illinois has an interest in this case because it is one of the governmental entities which the plaintiffs have determined should be held responsible for implementing a court-ordered plan of metropolitan-wide remedial relief. In March, 1975, almost nine years after initiation of these consolidated actions, the Housing Authority of Elgin, Illinois was served with Summons and Plaintiffs' Amended Complaint, thereby being made a party defendant to the district court action. Unless the opinion of the Seventh Circuit is reversed, the Housing

Authority of Elgin, inter alia, will be charged with carrying out the Gautreaux decree.

The government's petition for a writ of certiorari argues that in light of Milliken v. Bradley, it is inappropriate for a federal court to order inter-district relief for discrimination in public housing in the absence of a finding of an inter-district violation. While the amicus joins fully in the arguments presented in the appellant's petition, the amicus believes that the U. S. Department of Housing and Urban Development and local housing authorities such as the Housing Authority of Elgin have different, although complementing, perspectives on the relevance of the Milliken v. Bradley decision to the Gautreaux facts. The petitioner is quite rightly concerned over the effect of the court's decision on the Secretary's responsibility for administering HUD programs not only in the Chicago urbanized area, but nationwide. The amicus, however, is particularly concerned by the fact that the appellate court, in reversing the district court, held that an inter-district constitutional violation had occurred which called for, indeed demanded, an inter-district remedy. This finding was reached by the appellate court without affording the amicus, and similarly situated housing authorities, with notice and an opportunity to be heard. If the appellate court's decision is not reversed, the amicus will be held responsible for implementing a remedial decree without ever having been permitted to present evidence and respond to plaintiffs' allegation of an inter-district wrong.

Additionally, the Seventh Circuit attempted to distinguish the Milliken decision on the basis that the administrative problems of an inter-district housing remedy were not "remotely comparable" to the problems of cross-district busing, and that HUD and local housing authorities can build housing "much like any other landowner". In fact the petitioner builds no housing at all. Under the statutory scheme mandated by the Housing Act of 1937, HUD provides the financial resources to local housing authorities for construction of public housing.

As HUD is a financier rather than a builder of public housing, the amicus would be in a far better position than the petitioner to advise the court of both the legal and administrative difficulties which are sure to arise from the imposition of an inter-district housing remedy.

Finally the amicus wishes to bring to the court's attention the appellate court's holding that HUD violated the Fifth Amendment and Title VI of the Civil Rights Act of 1964, 42 USC 2000d, because HUD "knowingly acquiesced in CHA's admitted discriminatory housing program."

The holding of the Appellate Court that the HUD Secretary's failure to terminate funding violates the Fifth Amendment places HUD in an impossible dilemma. If HUD engages in conciliation and negotiation, it complies with Title VI but violates the Fifth Amendment. If HUD terminates funding, its actions are consistent with its constitutional obligation, but it violates Title VI. The court's solution to that dilemma represented error, for it constituted a holding by implication that the procedure mandated by Title VI was unconstitutional.

As complaints of discriminatory conduct by a federally funded housing authority (such as the appellate court's finding of inter-district violation in this case) are to be investigated and processed by the funding agency under the regulations and procedures demanded by Title VI, it is as important to local housing authorities as it is to HUD to know whether the procedure mandated by Title VI is constitutional.

Wherefore, the Housing Authority of Elgin, respectfully requests the Court to permit them to file an amicus curiae brief.

Respectfully submitted

Frederick J. Steffen

Attorney for Amicus Curiae